

May 20, 2004

THIS IS NOT AN OFFICIAL STATEMENT
OF THE COURT, BUT IS INTENDED
SOLELY FOR THE CONVENIENCE OF
THE PRESS

FOR IMMEDIATE RELEASE

IN THE SUPREME COURT OF THE STATE OF IDAHO

2004 Opinion No. 63

IDAHO DEPARTMENT OF LABOR;)
JERRY BROWN and DEBBIE BROWN,)
husband and wife; PATRICIA)
FARRINGTON and RICHARD)
FARRINGTON, wife and husband; MARY)
GRAY, BRETT PIPPENGER, surviving)
spouse of Jessica Pippenger; BRYCE)
PIPPENGER, child of Jessica Pippenger;)
BLAKE PIPPENGER, child of Jessica)
Pippenger; ANN MARIE ROWE, surviving)
spouse of Arthur Rowe.)

Docket No. 29069

Plaintiffs-Respondents,)

v.)

SUNSET MARTS, INC.; SUNSET)
MARTS, INC. d/b/a DEANO'S; JIM)
CASEY and EUGENA CASEY,)
individually and as husband and wife;)
STEPHEN BUSH and JANE DOE BUSH,)
individually as husband and wife.)

Defendants-Appellants.)

and)

HAYES FOOD STORES and ELLIE)
HAYES,)

Defendant-Intervenors-)
Appellants)

Appeal from the District Court of the Second Judicial District of the State of Idaho, in and for Clearwater County. Hon. George Rey Reinhardt, III, District Judge.

The appeal is dismissed.

Hall, Farley, Oberrecht & Blanton, P.A., Boise, for appellants Sunset Marts, Inc., and James and Eugena Casey. Raymond D. Powers argued.

Miller, Devlin, McLean & Weaver, P.S., Spokane, Washington, for appellants Hayes Food Store and Ellie Hayes. J. Scott Miller argued.

Anderson Julian & Hull, Boise, for respondent Idaho Department of Labor. Phillip J. Collaer argued.

Keeton & Tait, Lewiston, for respondents Jerry and Debbie Brown and Patricia and Richard Farrington. John R. Tait appeared.

Chenoweth Tyler & Snyder, Orofino, for respondent Maria Gray. E. Clayne Tyler appeared.

Aherin, Rice & Anegon, Lewiston, for respondents Brett, Bryce, and Blake Pippenger. Anthony C. Anegon appeared.

In a unanimous opinion the Idaho Supreme Court dismissed the defendants-appellants appeal.

This case involves claims for the recovery of wrongful death and personal injury damages arising out of an automobile accident in Clearwater County, Idaho. The plaintiffs-respondents are the Idaho Department of Labor and its employees or their survivors. The defendants-appellants are owners and/or operators of two convenience stores: Sunset Marts Inc. d/b/a Deano's, and Hayes Food Store. The plaintiffs assert that the driver of the vehicle who caused the accident purchased alcohol from the defendants' stores while obviously intoxicated.

The plaintiffs brought three claims for relief against the defendants: (1) Dram Shop Act violation; (2) negligence and negligent supervision and; (3) wrongful death of Jessica Pippenger and Arthur Rowe. The defendants in turn asserted several affirmative defenses including comparative negligence which, pursuant to Idaho Code § 6-801, bars or reduces the plaintiffs' recovery against the defendants.

Plaintiffs moved for partial summary judgment arguing that Idaho's Dram Shop Act, Idaho Code § 23-808 did not permit defendants to assert the affirmative defense of comparative negligence. The district court determined that, as a matter of law, comparative negligence

principles did not apply to this case and therefore granted plaintiffs' motion. Defendants appealed.

In an opinion released today, the Idaho Supreme Court dismissed the appeal holding that the dismissal of an affirmative defense cannot be deemed a final and appealable judgment under Idaho Rule of Civil Procedure 54(b). However, in dismissing the appeal, the Supreme Court also held that the district court misconstrued Idaho Code § 23-808. The Court held that Idaho Code § 23-808 does not preclude comparative negligence as an affirmative defense. "Thus, the Dram Shop Act does not provide that only the person who sold or otherwise provided alcoholic beverages to an intoxicated driver can be liable for the driver's negligence."